

2013 DRAFTING REQUEST

Assembly Amendment (AA-AB40)

Received: **3/18/2013**

Received By: **jkreye**

Wanted: **As time permits**

Same as LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Shanovich (RR)**

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - crp inc, fran**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**
Requester's email: **Legislative Fiscal Bureau**
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

LFB:.....Shanovich (RR) -

Topic:

Omnibus tax proposal: Depreciation and depletion

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 3/20/2013	scalvin 3/20/2013	phenry 3/20/2013	_____	srose 3/20/2013		
/P2	jkreye 6/5/2013	scalvin 3/21/2013	jfrantze 3/21/2013	_____	lparisi 3/21/2013		
/P3	jkreye 6/7/2013	kfollett 6/5/2013	jmurphy 6/5/2013	_____	lparisi 6/5/2013		
/P4	jkreye	scalvin	jfrantze	_____	srose		

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/P5		scalvin	rschluet	_____	srose		
		6/10/2013	6/10/2013	_____	6/10/2013		

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/P4		scalvin	jfrantze	_____	srose		

/P5 see
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/P3		kfollett 6/5/2013	jmurphy 6/5/2013	_____	lparisi 6/5/2013		

/P4 sac
06/07/2013

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Subject: Tax, Business - crp inc, fran Addl. Drafters:
Extra Copies:

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Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

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Omnibus tax proposal: Depreciation and depletion

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FE Sent For:

1 P3/5F
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self

<END>

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May Contact: Drafter: **jkreye**
Subject: **Tax, Business - crp inc, fran** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **ron.shanovich@legis.wisconsin.gov**
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**
Rep.Kooyenga@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Computing amortization and depreciation

Instructions:

See attached

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May Contact: Drafter: jkreye
Subject: Tax, Business - crp inc, fran Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: ron.shanovich@legis.wisconsin.gov
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov
Rep.Kooyenga@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Computing amortization and depreciation

Instructions:

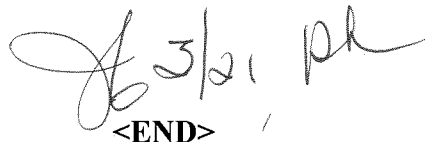
See attached

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FE Sent For:

1P2 sac
03/21/2013

 3/21 ph
<END>

2013 DRAFTING REQUEST

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Wanted:	As time permits	Same as LRB:	
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		Extra Copies:	

Submit via email: **YES**
 Requester's email: **ron.shanovich@legis.wisconsin.gov**
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Pre Topic:

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Topic:

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Instructions:

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/P1	jkreye	/P1 sac 03/20/2013	3/20 ph	yes/ph			

FE Sent For:

<END>



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBb0019/P1

JK:/:....
Sac

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 40

3-18-13
mm

1 At the locations indicated, amend the bill as follows:

2 1. Page 642, line 21: after that line insert:

3 "SECTION 1297d. 71.01 (7r) (a) of the statutes is amended to read:

4 71.01 (7r) (a) Notwithstanding sub. (6), and except as provided in ~~par.~~ pars. (b)
5 and (d), for purposes of computing amortization or depreciation, "Internal Revenue
6 Code" means the federal Internal Revenue Code as amended to December 31, 2000,
7 except that property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be
8 depreciated for taxable year 1986 under the Internal Revenue Code as amended to
9 December 31, 1980, shall continue to be depreciated under the Internal Revenue
10 Code as amended to December 31, 1980.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194;
2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226; 2009 a. 28, 161, 183; 2011 a. 32.

11 SECTION 1297e. 71.01 (7r) (b) of the statutes is amended to read:

1 71.01 (7r) (b) Notwithstanding sub. (6), for property acquired and placed in
2 service in taxable years beginning ~~on or~~ after December 31, 2005, and before January
3 1, ~~2006~~ 2014, a person who is actively engaged in farming may compute amortization
4 and depreciation on property used in farming under any subsequent change to
5 section 101 of P.L. 107–147 or section 201 of P.L. 108–27 enacted after December 31,
6 2005. For purposes of this paragraph, “actively engaged in farming” has the meaning
7 given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1)
8 of the Internal Revenue Code. This paragraph does not apply unless a federal law
9 change enacted after December 31, 2005, revises section 101 of P.L. 107–147 or
10 section 201 of P.L. 108–27.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226; 2009 a. 2, 28, 161, 183; 2011 a. 32.

11 **SECTION 1297f.** 71.01 (7r) (c) of the statutes is amended to read:

12 71.01 (7r) (c) Notwithstanding sub. (6), section 101 of P.L. 109–222, related to
13 extending the increased expense deduction under section 179 of the Internal
14 Revenue Code, applies to property used in farming that is acquired and placed in
15 service in taxable years beginning ~~on or~~ after December 31, 2007, and before January
16 1, ~~2008~~ 2014, and used by a person who is actively engaged in farming. For purposes
17 of this paragraph, “actively engaged in farming” has the meaning given in 7 CFR
18 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal
19 Revenue Code.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226; 2009 a. 2, 28, 161, 183; 2011 a. 32.

20 **SECTION 1297g.** 71.01 (7r) (d) of the statutes is created to read:

21 71.01 (7r) (d) Notwithstanding sub. (6), and for taxable years beginning after
22 December 31, 2013, for purposes of computing amortization or depreciation,
23 “Internal Revenue Code” means the federal Internal Revenue Code as amended. For

1 property placed in service before January 1, 2014, the taxpayer shall convert the
2 temporary difference between the book value under the federal Internal Revenue
3 Code, notwithstanding sub. (6), of all such property and the book value under par.
4 (a), (b), or (c) of all such property into a single asset and shall compute the
5 amortization or depreciation of that asset over a 5-year period.”.

6 **2.** Page 674, line 18: after that line insert:

7 **“SECTION ^{B/1372 d} 1337d.** 71.22 (5m) (b) of the statutes is amended to read:

8 71.22 (5m) (b) Notwithstanding subs. (4) and (4m), section 101 of P.L. 109-222,
9 related to extending the increased expense deduction under section 179 of the
10 Internal Revenue Code, applies to property used in farming that is acquired and
11 placed in service in taxable years beginning ~~on or~~ after December 31, 2007, and
12 before January 1, 2008 2014, and used by a person who is actively engaged in
13 farming. For purposes of this paragraph, “actively engaged in farming” has the
14 meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section
15 464 (e) (1) of the Internal Revenue Code.

^{B/1372 e}
History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33; 2005 a. 28, 49; 2007 a. 20, 226; 2009 a. 2, 28, 161, 183; 2011 a. 32.

16 **SECTION ^{B/1372 e} 1337e.** 71.22 (5m) (c) of the statutes is created to read:

17 71.22 (5m) (c) Notwithstanding subs. (4) and (4m), and for taxable years
18 beginning after December 31, 2013, for purposes of computing amortization or
19 depreciation, “Internal Revenue Code” means the federal Internal Revenue Code as
20 amended. For property placed in service before January 1, 2014, the taxpayer shall
21 convert the temporary difference between the book value under the federal Internal
22 Revenue Code, notwithstanding subs. (4) and (4m), of all such property and the book
23 value under par. (b) or sub. (4) or (4m) of all such property into a single asset and shall
24 compute the amortization or depreciation of that asset over a 5-year period.”.

1 **3.** Page 693, line 8: after that line insert:

2 “**SECTION 1383d.** 71.26 (3) (y) 1. of the statutes is amended to read:

3 71.26 (3) (y) 1. Except as provided in ~~subd.~~ subds. 2. and 3., a corporation shall
4 compute amortization and depreciation under the federal Internal Revenue Code as
5 amended to December 31, 2000, except that property first placed in service by the
6 taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s.
7 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the Internal
8 Revenue Code as amended to December 31, 1980, and property first placed in service
9 in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04
10 (15) (bm), 1985 stats., is required to be depreciated under the Internal Revenue Code
11 as amended to December 31, 1980, shall continue to be depreciated under the
12 Internal Revenue Code as amended to December 31, 1980.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428;
1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479,
483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28, 161, 165, 180, 183, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 7, 10, 32, 212, 232; 2011 a. 260 s. 80; s. 13.92 (2) (i); s. 35.17
correction in (2) (a) 10.

13 **SECTION 1383e.** 71.26 (3) (y) 2. of the statutes is amended to read:

14 71.26 (3) (y) 2. For property acquired and placed in service in taxable years
15 beginning ~~on or after~~ December 31, 2005, and before January 1, ~~2006~~ 2014, a
16 corporation that is actively engaged in farming may compute amortization and
17 depreciation on property used in farming under any subsequent change to section
18 101 of P.L. 107–147 or section 201 of P.L. 108–27 enacted after December 31, 2005.
19 For purposes of this subdivision, “actively engaged in farming” has the meaning
20 given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1)
21 of the Internal Revenue Code. This subdivision does not apply unless a federal law

change enacted after December 31, 2005, revises section 101 of P.L. 107–147 or section 201 of P.L. 108–27.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28, 161, 165, 180, 183, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 7, 10, 32, 212, 232; 2011 a. 260 s. 80; s. 13.92 (2) (i); s. 35.17 correction in (2) (a) 10.

SECTION 1383f. 71.26 (3) (y) 3. of the statutes is created to read:

71.26 (3) (y) 3. For taxable years beginning after December 31, 2013, a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended. For property placed in service before January 1, 2014, the taxpayer shall convert the temporary difference between the book value under the federal Internal Revenue Code, as amended, of all such property and the book value under subd. 1. or 2. of all such property into a single asset and shall compute the amortization or depreciation of that asset over a 5–year period.”.

4. Page 705, line 21: after that line insert:

SECTION 1408d. 71.34 (1m) (b) of the statutes is amended to read:

71.34 (1m) (b) Notwithstanding sub. (1g), section 101 of P.L. 109–222, related to extending the increased expense deduction under section 179 of the Internal Revenue Code, applies to property used in farming that is acquired and placed in service in taxable years beginning ~~on or~~ after December 31, 2007, and before January 1, 2008 2014, and used by a person who is actively engaged in farming. For purposes of this paragraph, “actively engaged in farming” has the meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal Revenue Code.

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 161, 183, 265, 269, 295, 332; 2011 a. 32, 212, 232; 2011 a. 260 s. 80; s. 13.92 (2) (i).

SECTION 1408e. 71.34 (1m) (c) of the statutes is created to read:

71.34 (3)(1m)
1 71.22 (5m)(c) Notwithstanding sub. (1g), and for taxable years beginning after
2 December 31, 2013, for purposes of computing amortization or depreciation,
3 "Internal Revenue Code" means the federal Internal Revenue Code as amended. For
4 property placed in service before January 1, 2014, the taxpayer shall convert the
5 temporary difference between the book value under the federal Internal Revenue
6 Code, notwithstanding sub. (1g), of all such property and the book value under par.
7 (b) or sub. (1g) of all such property into a single asset and shall compute the
8 amortization or depreciation of that asset over a 5-year period.

9 **SECTION 1408f.** 71.365 (1m) (a) of the statutes is amended to read:

10 71.365 (1m) (a) Except as provided in ~~par.~~ pars. (b) and (c), a tax-option
11 corporation shall compute amortization and depreciation under the federal Internal
12 Revenue Code as amended to December 31, 2000, except that property first placed
13 in service by the taxpayer on or after January 1, 1983, but before January 1, 1987,
14 that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under
15 the Internal Revenue Code as amended to December 31, 1980, and property first
16 placed in service in taxable year 1981 or thereafter but before January 1, 1987, that,
17 under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal
18 Revenue Code as amended to December 31, 1980, shall continue to be depreciated
19 under the Internal Revenue Code as amended to December 31, 1980. Any difference
20 between the adjusted basis for federal income tax purposes and the adjusted basis
21 under this chapter shall be taken into account in determining net income or loss in
22 the year or years for which the gain or loss is reportable under this chapter. If that
23 property was placed in service by the taxpayer during taxable year 1986 and
24 thereafter but before the property is used in the production of income subject to
25 taxation under this chapter, the property's adjusted basis and the depreciation or

1 other deduction schedule are not required to be changed from the amount allowable
2 on the owner's federal income tax returns for any year because the property is used
3 in the production of income subject to taxation under this chapter. If that property
4 was acquired in a transaction in taxable year 1986 or thereafter in which the
5 adjusted basis of the property in the hands of the transferee is the same as the
6 adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted
7 basis of that property on the date of transfer is the adjusted basis allowable under
8 the Internal Revenue Code as defined for Wisconsin purposes for the property in the
9 hands of the transferor.

History: 1987 a. 312; 1987 a. 411 ss. 40, 50, 147; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2005 a. 362; 2009 a. 28.

10 **SECTION 1408g.** 71.365 (1m) (b) of the statutes is amended to read:

11 71.365 (1m) (b) For property acquired and placed in service in taxable years
12 beginning ~~on or after~~ December 31, 2005, and before January 1, 2006 2014, a
13 tax-option corporation that is actively engaged in farming may compute
14 amortization and depreciation on property used in farming under any subsequent
15 change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after
16 December 31, 2005. For purposes of this paragraph, "actively engaged in farming"
17 has the meaning given in 7 CFR 1400.201, and "farming" has the meaning given in
18 section 464 (e) (1) of the Internal Revenue Code. This paragraph does not apply
19 unless a federal law change enacted after December 31, 2005, revises section 101 of
20 P.L. 107-147 or section 201 of P.L. 108-27.

History: 1987 a. 312; 1987 a. 411 ss. 40, 50, 147; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2005 a. 362; 2009 a. 28.

21 **SECTION 1408g.** 71.365 (1m) ^(b) ^(c) of the statutes is created to read:

22 71.365 (1m) (c) For taxable years beginning after December 31, 2013, a
23 tax-option corporation shall compute amortization and depreciation under the

1 federal Internal Revenue Code as amended. For property placed in service before
2 January 1, 2014, the taxpayer shall convert the temporary difference between the
3 book value under the federal Internal Revenue Code, as amended, of all such
4 property and the book value under par. (a) or (b) of all such property into a single
5 asset and shall compute the amortization or depreciation of that asset over a 5-year
6 period.”.

7 (END)

**Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

March 6, 2013

TITLE: FEDERALIZE DEPRECIATION AND SECTION 179 EXPENSE

DESCRIPTION OF CURRENT LAW AND PROBLEM

Wisconsin law currently provides that depreciation and amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000. The maximum amount that may be expensed under the Wisconsin definition of the Internal Revenue Code (IRC) is \$25,000. The amount that may be expensed under sec. 179 of the IRC for federal purposes is \$500,000 for 2012 and 2013. This amount may be increased or decreased for federal purposes for 2014 and thereafter, but it is not known at this time what will happen.

The difference between Wisconsin and federal depreciation and the sec. 179 expensing amounts causes an extra burden for businesses. Businesses are required to keep two sets of records relating to depreciation, one for federal tax purposes and one for Wisconsin tax purposes. Further complexity is added when the depreciable property is sold or otherwise disposed of and there is a difference in the federal and Wisconsin basis of the property for determining gain or loss.

FISCAL EFFECT

Federal bonus depreciation will expire at the end of tax year 2013. Based on information provided by Research and Policy, with current law, there would not be a large fiscal effect if federal law is adopted starting 1/1/14. However, in the past, bonus depreciation has been extended (and/or expanded). If 50 percent bonus depreciation is extended, it would result in a revenue loss of approximately \$50 million each year. If 100 percent bonus depreciation is enacted, the fiscal effect would be closer to \$100 million.

The fiscal effect of adopting sec. 179 expensing is a revenue loss of \$1.6 million for FY 2014 and \$3.9 million for FY 2015.

Automatically tying depreciation and expensing rules to the IRC leaves us open to large budget swings over which we have no control.

The fiscal effect of amortizing the new "asset" created in the bill over the five-year period is minimal.

DRAFTING INSTRUCTIONS

See Attachment A

EFFECTIVE DATE

Taxable years beginning after December 31, 2013

DRAFTING INSTRUCTIONS

- Create sec. 71.98(3) and (4) to read as follows:

(3) DEPRECIATION FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2013. Section 167 of the Internal Revenue Code and related to depreciation. For purposes of this subsection, Internal Revenue Code means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

(4) EXPENSING OF DEPRECIABLE BUSINESS ASSETS FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2013. Sections 179, 179A, 179B, 179C, 179D, and 179E of the Internal Revenue Code and related to expensing of depreciable business assets. For purposes of this subsection, Internal Revenue Code means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

- Create sec. ~~71.05(6)(b)48.~~, ~~71.26(3)(ym)~~, ~~71.34(1k)(n)~~, and ~~71.45(2)49.~~ to read as follows:

Starting with the first taxable year beginning after December 31, 2013, and for each of the next four taxable years, subtract one/fifth of the amount determined by subtracting the combined federal adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are also being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted basis of those assets on the same day. The Wisconsin adjusted basis of each asset is the federal adjusted basis of the asset for taxable years beginning after December 31, 2013.

- Amend secs. ~~71.01(7r)(a)~~ to limit the section to taxable years beginning before January 1, 2014.

- Repeal secs. ~~71.01(7r)(b)~~, ~~71.26(3)(y)2.~~, ~~71.365(1m)(b)~~ Note: These sections have never had any effect since no changes have been made to sec. 101 of P.L. 107-147 or sec. 201 of P.L. 108-27.

- Renumber sec. ~~71.01(7r)(c)~~ to ~~71.01(7r)(b)~~ and amend as renumbered to read:

Notwithstanding sub. (6), section 101 of P.L. 109-222, related to extending the increased expense deduction under section 179 of the Internal Revenue Code, applies to property used in farming that is acquired and placed in service in taxable years beginning on or after January 1, 2008, and before January 1, 2010, and used by a person who is actively engaged in farming. For purposes of this paragraph, "actively engaged in farming" has the meaning given in 7 CFR 1400.201, and "farming" has the meaning given in section 464(e)(1) of the Internal Revenue Code.

- Amend sec. ~~71.05(16)~~, ~~(17)~~, and ~~(18)~~ to limit the sections to taxable years beginning before January 1, 2014.

- Amend secs. 71.22(5m)(b) and 71.34(1m)(b) to limit the sections to "taxable years beginning on or after January 2, 2008, and before January 1, 2010, and used ..."
- Amend sec. 71.26(3)(y)1. to delete "Except as provided in subd. 2.," and to limit the section to taxable years beginning before January 1, 2014. Section 71.26(3)(y)1. should be renumbered to 71.26(3)(y).
- Amend sec. 71.34(1k)(intro.) to read: "Net income or loss" of a tax-option corporation means net income or loss computed under the internal revenue code, as defined under sub. (1g) and sec. 71.98(3) and (4), except that:
- Amend sec. 71.365(1m) to delete "Except as provided in par. b" and to limit the section to taxable years beginning before January 1, 2014.
- Amend sec. 71.45(2)7. and 13 to limit them to taxable years beginning before January 1, 2014.
- Provide that the department may promulgate rules to administer these provisions.

— already has rule-making
authority under
s. 227.11(2)(a)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBb0019/P1

JK:sac:ph

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 40

in 3-20-13

D-N

for taxable year beginning
before January 1, 2014

At the locations indicated, amend the bill as follows:

1. Page 642, line 21: after that line insert:

"SECTION 1297d. 71.01 (7r) (a) of the statutes is amended to read:

71.01 (7r) (a) Notwithstanding sub. (6), ~~and except as provided in par. (b)~~

~~and (d)~~ for purposes of computing amortization or depreciation, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2000, except that property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.

SECTION 1297e. 71.01 (7r) (b) of the statutes is amended to read:

repealed.

9

1 71.01 (7r) (b) Notwithstanding sub. (6), for property acquired and placed in
2 service in taxable years beginning ~~on or~~ after December 31, 2005, and before January
3 1, 2006 2014, a person who is actively engaged in farming may compute amortization
4 and depreciation on property used in farming under any subsequent change to
5 section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after December 31,
6 2005. For purposes of this paragraph, "actively engaged in farming" has the meaning
7 given in 7 CFR 1400.201, and "farming" has the meaning given in section 464 (e) (1)
8 of the Internal Revenue Code. This paragraph does not apply unless a federal law
9 change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or
10 section 201 of P.L. 108-27.

11 **SECTION 1297f.** 71.01 (7r) (c) of the statutes is amended to read:

12 71.01 (7r) (c) Notwithstanding sub. (6), section 101 of P.L. 109-222, related to
13 extending the increased expense deduction under section 179 of the Internal
14 Revenue Code, applies to property used in farming that is acquired and placed in
15 service in taxable years beginning ~~on or~~ after December 31, 2007, and before January
16 1, 2008 2014 ²⁰¹⁰ and used by a person who is actively engaged in farming. For purposes
17 of this paragraph, "actively engaged in farming" has the meaning given in 7 CFR
18 1400.201, and "farming" has the meaning given in section 464 (e) (1) of the Internal
19 Revenue Code. "

20 **SECTION 1297g.** 71.01 (7r) (d) of the statutes is created to read:

21 71.01 (7r) (d) Notwithstanding sub. (6), and for taxable years beginning after
22 December 31, 2013, for purposes of computing amortization or depreciation,
23 "Internal Revenue Code" means the federal Internal Revenue Code as amended. For
24 property placed in service before January 1, 2014, the taxpayer shall convert the
25 temporary difference between the book value under the Internal Revenue Code,

Insert 3-3
1 notwithstanding sub. (6), of all such property and the book value under par. (a), (b),
2 or (c) of all such property into a single asset and shall compute the amortization or
3 depreciation of that asset over a 5-year period.”

4 **2.** Page 674, line 18: after that line insert:

5 “SECTION 1372d. 71.22 (5m) (b) of the statutes is amended to read:

6 71.22 (5m) (b) Notwithstanding subs. (4) and (4m), section 101 of P.L. 109–222,
7 related to extending the increased expense deduction under section 179 of the
8 Internal Revenue Code, applies to property used in farming that is acquired and
9 placed in service in taxable years beginning on or after December 31, 2007, and
10 before January 1, 2008 ²⁰¹⁰ ~~2014~~, and used by a person who is actively engaged in
11 farming. For purposes of this paragraph, “actively engaged in farming” has the
12 meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section
13 464 (e) (1) of the Internal Revenue Code.”

14 **SECTION 1372e.** 71.22 (5m) (c) of the statutes is created to read:

15 71.22 (5m) (c) Notwithstanding subs. (4) and (4m), and for taxable years
16 beginning after December 31, 2013, for purposes of computing amortization or
17 depreciation, “Internal Revenue Code” means the federal Internal Revenue Code as
18 amended. For property placed in service before January 1, 2014, the taxpayer shall
19 convert the temporary difference between the book value under the Internal
20 Revenue Code, notwithstanding subs. (4) and (4m), of all such property and the book
21 value under par. (b) or sub. (4) or (4m) of all such property into a single asset and shall
22 compute the amortization or depreciation of that asset over a 5-year period.”

23 **3.** Page 693, line 8: after that line insert:

24 “SECTION 1383d. 71.26 (3) (y) 1. of the statutes is amended to read:

renumbered 71.26 (3) (y) 1.
the statutes and
keep

For taxable year beginning before January 1, 2014

71.26 (3) (y) 1. ~~Except as provided in subd. subds. 2. and 3.~~ a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended to December 31, 2000, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.

SECTION 1383e. 71.26 (3) (y) 2. of the statutes is amended to read:

repealed.

~~71.26 (3) (y) 2. For property acquired and placed in service in taxable years beginning on or after December 31, 2005, and before January 1, 2006 2014, a corporation that is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after December 31, 2005. For purposes of this subdivision, "actively engaged in farming" has the meaning given in 7 CFR 1400.201, and "farming" has the meaning given in section 464 (e) (1) of the Internal Revenue Code. This subdivision does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or section 201 of P.L. 108-27.~~

SECTION 1383f. 71.26 (3) (y) 3. of the statutes is created to read:

71.26 (3) (y) 3. For taxable years beginning after December 31, 2013, a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended. For property placed in service before January 1, 2014,

1 the taxpayer shall convert the temporary difference between the book value under
2 the federal Internal Revenue Code, as amended, of all such property and the book
3 value under subd. 1. or 2. of all such property into a single asset and shall compute
4 the amortization or depreciation of that asset over a 5-year period.”

5 **4.** Page 705, line 21: after that line insert:

6 **SECTION 1408d.** 71.34 (1m) (b) of the statutes is amended to read:

7 71.34 (1m) (b) Notwithstanding sub. (1g), section 101 of P.L. 109-222, related
8 to extending the increased expense deduction under section 179 of the Internal
9 Revenue Code, applies to property used in farming that is acquired and placed in
10 service in taxable years beginning on or after December 31, 2007, and before January
11 1, 2008 ²⁰¹⁰ ~~2014~~, and used by a person who is actively engaged in farming. For purposes
12 of this paragraph, “actively engaged in farming” has the meaning given in 7 CFR
13 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal
14 Revenue Code.

15 **SECTION 1408e.** 71.34 (1m) (c) of the statutes is created to read:

16 71.34 (1m) (c) Notwithstanding sub. (1g), and for taxable years beginning after
17 December 31, 2013, for purposes of computing amortization or depreciation,
18 “Internal Revenue Code” means the federal Internal Revenue Code as amended. For
19 property placed in service before January 1, 2014, the taxpayer shall convert the
20 temporary difference between the book value under the Internal Revenue Code,
21 notwithstanding sub. (1g), of all such property and the book value under par. (b) or
22 sub. (1g) of all such property into a single asset and shall compute the amortization
23 or depreciation of that asset over a 5-year period.

24 **SECTION 1408f.** 71.365 (1m) (a) of the statutes is amended to read:

renumbered
renumber 71.365 (1m) of the statutes and

For taxable year beginning before January 1, 2014

1 71.365 (1m) (a) ~~Except as provided in par. pars. (b) and (c)~~ a tax-option
2 corporation shall compute amortization and depreciation under the federal Internal
3 Revenue Code as amended to December 31, 2000, except that property first placed
4 in service by the taxpayer on or after January 1, 1983, but before January 1, 1987,
5 that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under
6 the Internal Revenue Code as amended to December 31, 1980, and property first
7 placed in service in taxable year 1981 or thereafter but before January 1, 1987, that,
8 under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal
9 Revenue Code as amended to December 31, 1980, shall continue to be depreciated
10 under the Internal Revenue Code as amended to December 31, 1980. Any difference
11 between the adjusted basis for federal income tax purposes and the adjusted basis
12 under this chapter shall be taken into account in determining net income or loss in
13 the year or years for which the gain or loss is reportable under this chapter. If that
14 property was placed in service by the taxpayer during taxable year 1986 and
15 thereafter but before the property is used in the production of income subject to
16 taxation under this chapter, the property's adjusted basis and the depreciation or
17 other deduction schedule are not required to be changed from the amount allowable
18 on the owner's federal income tax returns for any year because the property is used
19 in the production of income subject to taxation under this chapter. If that property
20 was acquired in a transaction in taxable year 1986 or thereafter in which the
21 adjusted basis of the property in the hands of the transferee is the same as the
22 adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted
23 basis of that property on the date of transfer is the adjusted basis allowable under
24 the Internal Revenue Code as defined for Wisconsin purposes for the property in the
25 hands of the transferor.

1 **SECTION 1408g.** 71.365 (1m) (b) of the statutes is amended to read:

repealed.

2 **71.365 (1m) (b)** For property acquired and placed in service in taxable years
3 beginning ~~on or~~ after December 31, 2005, and before January 1, ~~2006~~ 2014, a
4 tax-option corporation that is actively engaged in farming may compute
5 amortization and depreciation on property used in farming under any subsequent
6 change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after
7 December 31, 2005. For purposes of this paragraph, "actively engaged in farming"
8 has the meaning given in 7 CFR 1400.201, and "farming" has the meaning given in
9 section 464 (e) (1) of the Internal Revenue Code. This paragraph does not apply
10 unless a federal law change enacted after December 31, 2005, revises section 101 of
11 P.L. 107-147 or section 201 of P.L. 108-27.

12 **SECTION 1408h.** 71.365 (1m) (c) of the statutes is created to read:

13 **71.365 (1m) (c)** For taxable years beginning after December 31, 2013, a
14 tax-option corporation shall compute amortization and depreciation under the
15 federal Internal Revenue Code as amended. For property placed in service before
16 January 1, 2014, the taxpayer shall convert the temporary difference between the
17 book value under the federal Internal Revenue Code, as amended, of all such
18 property and the book value under par. (a) or (b) of all such property into a single
19 asset and shall compute the amortization or depreciation of that asset over a 5-year
20 period."

21 **(END)**

Insert 7-20

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0019/P2ins
JK:sac:ph

Insert 3 - 3

1 **1.** Page 645, line 21: after that line insert:

2 “**SECTION 1304d.** 71.05 (6) (b) 48. of the statutes is created to read:

3 71.05 (6) (b) 48. Starting with the first taxable year beginning after December
4 31, 2013, and for each of the next 4 taxable years, 20 percent of the amount
5 determined by subtracting the combined federal adjusted basis of all depreciated or
6 amortized assets as of the last day of the taxable year beginning in 2013 that are also
7 being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted
8 basis of those assets on the same day. For purposes of this subdivision, the Wisconsin
9 adjusted basis of each asset is the federal adjusted basis of the asset for taxable years
10 beginning after December 31, 2013.

11 **SECTION 1304f.** 71.05 (16) of the statutes is amended to read:

12 71.05 (16) DEPRECIATION CONTINUATION. Property For taxable years beginning
13 before January 1, 2014, property that, under s. 71.02 (2) (d) 12., 1985 stats., is
14 required to be depreciated for taxable year 1986 under the internal revenue code as
15 amended to December 31, 1980, shall continue to be depreciated under the internal
16 revenue code as amended to December 31, 1980.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

17 **SECTION 1304g.** 71.05 (17) of the statutes is amended to read:

18 71.05 (17) DIFFERENCE IN BASIS. With For taxable years beginning before
19 January 1, 2014, with respect to depreciable property that, under s. 71.02 (2) (d) 12.,
20 1985 stats., is required to be depreciated for taxable year 1986 under the internal
21 revenue code as amended to December 31, 1980, and that was disposed of in taxable
22 year 1986 and thereafter, any difference between the adjusted basis for federal

income tax purposes and the adjusted basis under this chapter shall be taken into account in determining net income or loss in the year or years that the gain or loss is reportable under this chapter.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

SECTION 1304h. 71.05 (18) of the statutes is amended to read:

71.05 (18) CARRY-OVER BASIS PRECLUDED. ~~With~~ For taxable years beginning before January 1, 2014, with respect to property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code as amended to December 31, 1980, and that was acquired in a transaction occurring in taxable year 1986 and thereafter in which the adjusted basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted basis of that property on the date of transfer is the adjusted basis allowable under the depreciation provisions of the internal revenue code as defined for Wisconsin purposes for the property in the hands of the transferor.”.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

Insert 5 – 4

x

SECTION 1383f. 71.26 (3) (ym) of the statutes is created to read:

71.26 (3) (ym) Starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a corporation shall subtract 20 percent of the amount determined by subtracting the combined federal adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are also being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted basis of those assets on the same day. For purposes

1 of this paragraph, the Wisconsin adjusted basis of each asset is the federal adjusted
2 basis of the asset for taxable years beginning after December 31, 2013.”.

Insert 5 - 5

3 “SECTION 1408b. 71.34 (1k) (intro.) of the statutes is amended to read:

4 71.34 (1k) (intro.) “Net income or loss” of a tax-option corporation means net
5 income or loss computed under the internal revenue code, as defined under sub. (1g)
6 and s. ~~71.83~~(3) and (4), except that: 71.98

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 161, 183, 265, 269, 295, 332; 2011 a. 32, 212, 232; 2011 a. 260 s. 80; s. 13.92 (2) (i).

7 **SECTION 1408c.** 71.34 (1k) (n) of the statutes is created to read:

8 71.34 (1k) (n) Starting with the first taxable year beginning after December
9 31, 2013, and for each of the next 4 taxable years, a subtraction shall be made in an
10 amount equal to 20 percent of the amount determined by subtracting the combined
11 federal adjusted basis of all depreciated or amortized assets as of the last day of the
12 taxable year beginning in 2013 that are also being depreciated or amortized for
13 Wisconsin from the combined Wisconsin adjusted basis of those assets on the same
14 day. For purposes of this paragraph, the Wisconsin adjusted basis of each asset is
15 the federal adjusted basis of the asset for taxable years beginning after December 31,
16 2013.

Insert 7 - 20

17 **2.** Page 713, line 8: after that line insert:

18 “SECTION 1419d. 71.45 (2) (a) 7. of the statutes is amended to read:

19 71.45 (2) (a) 7. By For taxable years beginning before January 1, 2014, by
20 adding or subtracting, as appropriate, the amount required to reflect the fact that
21 property that, under s. 71.01 (4) (g) 7. to 10., 1985 stats., is required to be depreciated

for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 32, 212, 232; 2011 a. 260 s. 80; 13.92 (2) (i). *

SECTION 1419e. 71.45 (2) (a) 13. of the statutes is amended to read:

71.45 (2) (a) 13. By For taxable years beginning before January 1, 2014, by adding or subtracting, as appropriate, the depreciation deduction under the federal Internal Revenue Code as amended to December 31, 2000, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 32, 212, 232; 2011 a. 260 s. 80; 13.92 (2) (i). ✓

SECTION 1419f. 71.45 (2) (a) 19. of the statutes is created to read:

71.45 (2) (a) 19. Starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, by subtracting 20 percent of the amount determined by subtracting the combined federal adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are also being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted basis of those assets on the same day. For purposes of this

1 paragraph, the Wisconsin adjusted basis of each asset is the federal adjusted basis
2 of the asset for taxable years beginning after December 31, 2013.”

3 **3.** Page 724, line 19: after that line insert:

4 “**SECTION 1453d.** 71.98 (3) of the statutes is created to read:

5 71.98 (3) DEPRECIATION. For taxable years beginning after December 31, 2013,
6 section 167 of the Internal Revenue Code and related to depreciation. For purposes
7 of this subsection, the Internal Revenue Code means the federal Internal Revenue
8 Code in effect for the year in which property is placed in service.

9 **SECTION 1453e.** 71.98 (4) of the statutes is created to read:

10 71.98 (4) EXPENSING OF DEPRECIABLE BUSINESS ASSETS. For taxable years
11 beginning after December 31, 2013, sections 179, 179A, 179B, 179C, 179D, and 179E
12 of the Internal Revenue Code and related to expensing of depreciable business
13 assets. For purposes of this subsection, the Internal Revenue Code means the federal
14 Internal Revenue Code in effect for the year in which property is placed in service.”.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0019/P2dn

JK:sac:ths

- date -

Ron Shanovich and Rep. Kooyenga:

This draft is based on instructions I received from DOR on Wednesday, March 20, 2013. Please note that DOR wanted the amendment to provide that DOR "may" promulgate rules to administer the provisions created in the amendment. I did not include this because, under s. 227.11 (2) (a), DOR "may" promulgate rules in order to enforce and administer the statutes. If, however, you want to require that DOR promulgate rules to administer the new provisions, I would need to add that to the draft.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0019/P2dn
JK:sac:jf

March 21, 2013

Ron Shanovich and Rep. Kooyenga:

This draft is based on instructions I received from DOR on Wednesday, March 20, 2013. Please note that DOR wanted the amendment to provide that DOR “may” promulgate rules to administer the provisions created in the amendment. I did not include this because, under s. 227.11 (2) (a), DOR “may” promulgate rules in order to enforce and administer the statutes. If, however, you want to require that DOR promulgate rules to administer the new provisions, I would need to add that to the draft.

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Stephen R. Miller
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March 25, 2013

MEMORANDUM

To: Representative Kooyenga

From: Joseph T. Kreye, Senior Legislative Attorney
Phone: (608) 266-2263, E-mail: joseph.kreye@legis.wisconsin.gov

cc. Ron Shanovich and Rick Olin, LFB; Marc Shovers, LRB

Subject: Automatic adoption of federal law changes for depreciation and amortization

This memorandum is meant to alert you to the possibility that your budget proposal for automatically adopting, for state tax purposes, future changes to the federal Internal Revenue Code related to depreciation and amortization may be challenged in court as an unlawful delegation of legislative authority, a violation of Article IV, section 1 of the Wisconsin Constitution.

Article IV, section 1 of the state constitution provides that the "legislative power shall be vested in a senate and assembly." The Wisconsin Supreme Court has found that the legislature may not delegate its power to make laws. Or, put another way, the legislature "may delegate any power which it may itself rightfully exercise *which is not legislative* [emphasis added]. See, *State v. Wakeen*, 263 Wis. 401, 407-09 (1953) and *Niagara of Wis. Paper Corp. v. DNR*, 84 Wis.2d 32, 51 (1978).

Determining state tax policy is obviously a legislative function. The attorney general has opined that "attempted incorporation by reference of future federal statutes would constitute an unlawful delegation of legislative power." See, 50 Op. Att'y. Gen. 107 (1961). The state tax statutes, and the statutory definitions for the Internal Revenue Code in particular, are structured to avoid that problem. See, *Cleaver v. Department of Revenue*, 158 Wis. 2d 734 (1990).

In *Cleaver*, the taxpayer argued that a change to federal tax law made by the Deficit Reduction Act of 1984 should apply to the taxpayer's state income tax computation for a prior taxable year, even though the definition of Wisconsin taxable income for the year in question was determined by a reference to the Internal Revenue Code as amended to December 31, 1976. The Court rejected the taxpayer's interpretation:

"[T]he Wisconsin tax statutes operate to allow the legislature to consider Code amendments and congressional acts affecting federal tax law before incorporating them into Wisconsin tax law. The legislature frequently updates the statutes so that the tax law for each year is fixed by the Internal Revenue Code as it stood on December 31 of the previous year." *Id.* at 741.

The Court elaborated in a footnote:

“The legislature apparently structured the statutes in this fashion in response to an attorney general opinion which advised that the ‘attempted incorporation by reference of future federal statutes would constitute an unlawful delegation of legislative power.’ 50 Op. Att’y Gen. 107, 113 (1961). *See also* 66 Op. Att’y Gen. 331 (1977) (discussing how the tax statutes operate to avoid the delegation of powers problem and noting that ‘periodic updating and strict scrutiny by the state Legislature of the federal internal revenue code...may result in the adoption of differences between the federal and state tax systems, inconsistent with the objectives of “simplification,” but apparently in response to more compelling policy considerations.’” Id. at 741–42.

In other words, although having identical federal and state tax codes would benefit taxpayers, the legislature may not delegate its authority to scrutinize changes in the federal law for state tax purposes, *before* incorporating the changes, in exchange for simplification.

Although I can not predict how a court would rule on a challenge to your proposal regarding depreciation and amortization changes, you should at least be aware that the proposal could be challenged as an unlawful delegation of legislative power. Please contact me if you have questions.